

1 Matthew D. Schelkopf (pro hac vice)
2 SAUDER SCHELKOPF
3 1109 Lancaster Avenue
4 Berwyn, Pennsylvania 19312
5 mds@sstriallawyers.com

6 Adam Gonnelli (pro hac vice)
7 LAW OFFICE OF ADAM R. GONNELLI, L.L.C.
8 7030 E. Genesee Street
9 Fayetteville, New York 13066
10 adam@arglawoffice.com

11 Bonner Walsh (pro hac vice)
12 WALSH PLLC
13 1561 Long Haul Road
14 Grangeville, ID 83530
15 bonner@walshpllc.com

16 *Attorneys for Plaintiffs and the Proposed Class*

17 ***[LIST OF ADDITIONAL COUNSEL ON SIGNATURE PAGE]***

18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA

20 *In re: Hyundai and Kia Engine Litigation,*

8:17-cv-00838-JLS-JDE

Related Cases:

8:17-cv-01365-JLS-JDE

8:17-cv-02208-JLS-JDE

2:18-cv-05255-JLS-JDE

8:18-cv-00622-JLS-JDE

8:18-cv-02223-JLS-JDE

**PLAINTIFFS' NOTICE OF
MOTION AND UNOPPOSED
MOTION FOR CLASS COUNSEL
FEE AND EXPENSE AWARD
AND CLASS REPRESENTATIVE
SERVICE AWARDS**

Date: November 13, 2020

Time: 10:30 a.m.

Hon. Josephine L. Staton

Courtroom: 10A

NOTICE OF MOTION

PLEASE TAKE NOTICE that on November 13, 2020, at 10:30 a.m. before Honorable Josephine L. Staton in Court 10A, 10th Floor, of the United States District Court for the Central District of California, located at Ronald Reagan Federal Building and United States Courthouse, 411 W. Fourth St., Santa Ana, CA, 92701, Plaintiffs Cara Centko, Jenn Lazar, Christopher Stanczak, Rose Creps, James Kinnick, Wallace Coats, Maryanne Brogan, Andrea Smolek, Danny Dickerson, Robert Fockler, Amy Franklin, Donald House, Dave Loomis, Joseph McCallister, Arron Miller, Ricky Montoya, Lynn North, Mark Rice, Reid Schmitt, James Smith, and Chris Stackhouse will and hereby do move for an order of the Court awarding Class Counsel \$6,900,000 in attorneys' fees and up to \$175,000 in litigation expenses, as well as \$3,500 to each Class Representative as a service award.

Plaintiffs' unopposed motion is based on this notice; the accompanying Memorandum of Law; the Declarations of Matthew D. Schelkopf, Bonner C. Walsh, Adam Gonnelli, and Steve W. Berman¹ and all attachments thereto (including the Settlement Agreement); the Proposed Order Granting Plaintiffs' Motion for a Fee and Expense Award and Class Representative Service Awards; and all other papers filed and proceedings had in this Action.

This motion is made following the conference of counsel pursuant to L.R. 7-3, which took place on September 30, 2020.

¹ Declarations from Alison Bernal, Daniel Levin, Nicholas A. Migliaccio, and Jason Sultzer are also submitted herewith.

1 Dated: September 30, 2020

Respectfully submitted,

2 By: /s/ Matthew D. Schelkopf

3 Joseph G. Sauder

4 Matthew D. Schelkopf

5 Joseph B. Kenney

SAUDER SCHELKOPF LLC

6 1109 Lancaster Avenue

Berwyn, PA 19312

7 Telephone: (610) 200-0581

8 jgs@sstriallawyers.com

9 mds@sstriallawyers.com

jbk@sstriallawyers.com

10 Adam Gonnelli (*pro hac vice*)

11 **LAW OFFICE OF ADAM R. GONNELLI,**
12 **L.L.C.**

7030 E. Genesee Street

13 Fayetteville, NY 13066

14 Telephone: (917) 541-7110

15 Facsimile: (315) 446-7521

adam@arglawoffice.com

16 Bonner Walsh (*pro hac vice*)

17 **WALSH PLLC**

18 1561 Long Haul Road

Grangeville, ID 83530

19 Telephone: (541) 359-2827

20 Facsimile: (866) 503-8206

bonner@walshpllc.com

21 Steve W. Berman (*pro hac vice*)

22 **HAGENS BERMAN SOBOL SHAPIRO**
23 **LLP**

24 1301 Second Avenue, Suite 2000

Seattle, WA 98101

25 Telephone: (206) 623-7292

26 Fax: (206) 623-0594

27 steve@hbsslaw.com

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I. INTRODUCTION

After litigating this case since May 10, 2017, on a wholly contingent basis and negotiating a settlement that creates substantial benefits for owners and lessees of approximately 4.1 million Class Vehicles, Plaintiffs seek an order that requires Defendants to pay: (1) \$6,900,000 in attorneys' fees to Class Counsel, (2) actual costs up to \$175,000 to Class Counsel for reimbursement of litigation expenses, and (3) \$3,500 to each named Plaintiff as service awards. As described in the Settlement Agreement, the parties did not discuss attorneys' fees and service awards until after they agreed on the relief to the Class. Fee and service award negotiations concluded after the second of two mediations with Edward A. Infante (Ret.) on September 1, 2020.

The Notice disseminated to Class members stated Class Counsel would not seek more than \$12,000,000 in fees and expenses, and service awards of no more than \$3,500 per Plaintiff. The \$6,900,000 in attorneys' fees, up to \$175,000 in expenses, and \$3,500 service awards are well below the parameters of the Notice. To date, one Class member objected to the attorneys' fees, but the generic objection does not comply with the requirements outlined in the Notice and should be overruled for the reasons set forth below.

Given the amount of work performed by Class Counsel, the outstanding results achieved and other applicable factors, the fee and expense requests are reasonable and should be approved. The requested Class Representative service awards are also within the range of awards approved by this Court, and are warranted here in recognition of the time and effort Plaintiffs committed to this case, which was indispensable to its successful resolution. Plaintiffs respectfully request the Court grant each of these requests.

II. OVERVIEW OF CLASS COUNSEL’S WORK IN THE CASE

A. Pre-Filing Investigation and Complaint Preparation

Before initiating this litigation, Class Counsel devoted substantial time and energy to investigating the underlying facts and developing their allegations. They conducted extensive interviews with hundreds of Class Vehicle owners and lessees. (Schelkopf Decl. ¶¶ 10-13; Berman Decl. ¶¶ 7, 9.). They reviewed hundreds of online complaints, conducted an investigation into the Class Vehicle engines, and consulted with automotive experts to discern potential root causes of the defect based on the common threads from the interviews with putative Class members. (Schelkopf Decl. ¶¶ 10-13; Berman Decl. ¶¶ 7, 9.) Collectively, Class Counsel’s efforts resulted in the filing of numerous, detailed complaints with a plethora of well-researched factual allegations relating to the underlying defect. (Schelkopf Decl. ¶ 13; Berman Decl. ¶ 8.) Matthew Schelkopf also personally acquired, tore down, and inspected a failed Theta II GDI engine from a Class Vehicle to aid in his firm’s pre-filing investigation. (Schelkopf Decl. ¶ 12.)

B. Case Coordination and Motion Practice

On May 10, 2017, Plaintiffs Cara Centko and Jen Lazar filed a proposed nationwide class action against Kia Motors America, Inc. (“KMA”) alleging a defect in certain Kia vehicles that cause catastrophic engine failure. No. 8:17-cv-00838-JLS-JDE (C.D. Cal.), ECF No. 2. On August 8, 2017, Plaintiffs Christopher Stanczak and Rose Creps filed a proposed nationwide class action against KMA alleging a substantially similar defect to *Centko*. No. 8:17-cv-01365-JLS-JDE (C.D. Cal.), ECF No. 1. On December 19, 2017, Plaintiffs Wallace Coats and James Kinnick filed a proposed nationwide class action against Hyundai Motor America, Inc. (“HMA”) and Hyundai Motor Company, Ltd. (“HMC”) alleging a defect in certain Hyundai vehicles that cause catastrophic engine failure. No. 8:17-cv-02208 (C.D. Cal.), ECF No. 1. On January 23, 2018, Plaintiff Maryanne Brogan filed a proposed nationwide class action

1 against HMA, HMC, KMA, and Kia Motors Corporation (“KMC”). No. 8:18-cv-
2 00622-JLS-JDE, ECF No 1. On June 14, 2018, Plaintiff Andrea Smolek filed
3 proposed nationwide class action against HMA and KMA alleging a substantially
4 similar defect to the aforementioned actions in certain Hyundai and Kia vehicles. No.
5 2:18-cv-05255-JLS-JDE (C.D. Cal.), ECF No. 1.

6 On August 7, 2018, the Court consolidated these actions and designated the
7 master docket as *In re: Hyundai and Kia Engine Litigation*, No. 8:17-cv-00838. (ECF
8 No. 85.)

9 On September 4, 2018, Defendants KMA, HMA, and HMC moved separately to
10 dismiss Plaintiffs’ claims, and Plaintiffs opposed both motions. (ECF Nos. 86-88; 93-
11 94.) In light of possible settlement, the parties moved to stay any ruling on the pending
12 motions to dismiss, which the Court granted. (ECF Nos. 97, 98.)

13 On December 14, 2018, Plaintiffs Fockler, House, Loomis, Miller, Moore, Rice,
14 and Smith, along with other plaintiffs not subject to this Settlement,² filed a proposed
15 nationwide class action alleging similar claims to those in *In re: Hyundai and Kia*
16 *Engine Litigation. Flaherty v. Hyundai Motor Co., et al.*, No. 18- cv-02223 (C.D.
17 Cal.). *Flaherty* was amended twice, on January 10, 2019, and May 1, 2019, to add in
18 relevant part Plaintiffs Dickerson, McCallister, Montoya, Franklin, North, Schmitt,
19 and Stackhouse. Over the coming months, *Flaherty* counsel and counsel for the
20 consolidated action (collectively, “Class Counsel”) began working together to
21 prosecute and settle their respective cases together.

22 On April 22, 2019, while the parties were negotiating the terms of the
23 Settlement, plaintiffs in a separate lawsuit pending in the Northern District of
24

25 ² *Flaherty* is not settled in its entirety because the case includes additional Hyundai
26 and Kia vehicles (with different engines than those of the Class Vehicles) that are not
27 included in this Settlement, and the claims of *Flaherty*’s named plaintiffs and putative
28 class members not explicitly named, identified, or encompassed in this Settlement are
subject to ongoing litigation that is currently stayed.

1 California³ filed a petition with the Judicial Panel on Multidistrict Litigation (the
2 “Panel”) attempting to transfer and coordinate or consolidate this litigation with cases
3 filed by other plaintiffs’ counsel (the “Motion”). (MDL No. 2898, ECF No. 1-1.) Class
4 Counsel filed an opposition, arguing that consolidation was inappropriate because the
5 proposed settlement was almost finalized. (MDL No. 2898, ECF No. 21.) Class
6 Counsel presented oral argument to the Judicial Panel on Multidistrict Litigation, and
7 shortly thereafter the Panel denied the motion to transfer or consolidate. (MDL No.
8 2898, ECF No. 58.)

9 **C. Discovery**

10 The parties engaged in substantial discovery of Defendants related to their
11 claims. (Schelkopf Decl. ¶¶ 14-17; Berman Decl. ¶¶ 10-11.) Class Counsel requested
12 numerous internal engineering documents regarding Class Vehicles. The discovery
13 included data and analyses relating to potential defects, warranty claims, customer
14 complaints, and internal communications. After those documents were produced and
15 analyzed, Class Counsel deposed two Hyundai Motor Co., Ltd. employees, both of
16 whom traveled from South Korea for their deposition. (Schelkopf Decl. ¶¶ 16-17;
17 Berman Decl. ¶ 11.) With the aid of an experienced translator, the depositions spanned
18 two days and covered hundreds of pages of documents produced by Defendants during
19 confirmatory discovery. (Schelkopf Decl. ¶ 16-17; Berman Decl. ¶ 11.) At the
20 conclusion of the depositions, Class Counsel understood both the nature of the alleged
21 defect and the scope of potential corrective actions.

22 **D. Mediation and Settlement Negotiations**

23 After the Court entered the consolidation order on August 7, 2018, counsel in
24 the consolidated cases met and conferred with counsel for Defendants on multiple
25 occasions, including an in-person meeting in Los Angeles with an engineering
26 representative from HMA and KMA present, regarding the allegations in the
27

28 ³ *Musgrave v. Hyundai Motor America, Inc.*, No. 4:18-cv-07313-YGR (N.D. Cal.)

1 consolidated action, the potential defenses of HMA and KMA, and potential
2 resolution. These meetings between counsel culminated in a mediation session before
3 the Honorable Ronald M. Sabraw (Ret.) on December 21, 2018, where the parties
4 settled in principle. Counsel, including counsel in *Flaherty*, continued settlement
5 discussions over the next several months, which resulted in additional modifications
6 and enhancements to the proposed settlement. (Schelkopf Decl. ¶ 19; Berman Decl.
7 ¶ 12.)

8 Once the Settlement was reached in principle, Class Counsel spent months
9 drafting and revising the Settlement Agreement and conferring with defense counsel.
10 (Schelkopf Decl. ¶¶ 18-20; Berman Decl. ¶ 13.) They briefed preliminary approval,
11 attended the preliminary approval hearing, revised the Settlement and filed
12 supplemental briefing as needed or at the Court's directive. ECF Nos. 112, 118-121,
13 125-129, 132. They also supervised Notice and creation of the Settlement websites.
14 (Schelkopf Decl. ¶ 20; Berman Decl. ¶ 13.) Class Counsel's responsibilities are
15 ongoing, as we field Class member inquiries and objections regarding the Settlement.

16 **E. Fee Negotiations**

17 Only after reaching agreement on the relief to Class members did the parties
18 turn their negotiations to attorneys' fees and expenses and service awards to the
19 Plaintiffs. (Schelkopf Decl. ¶ 21; Berman Decl. ¶ 27.) While counsel first discussed
20 potential attorneys' fees and service awards during the December 21, 2018 mediation
21 with Ronald M. Sabraw (Ret.), these negotiations were not resolved until the second
22 of two mediations with the Honorable Edward A. Infante (Ret.) on September 1, 2020.
23 (Schelkopf Decl. ¶ 21; Berman Decl. ¶ 28.)

24 **III. ARGUMENT**

25 **A. Plaintiffs Are Entitled to a Fee Under California Law**

26 Rule 23 of the Federal Rules of Civil Procedure provides that in a class action
27 settlement, "the court may award reasonable attorney's fees and nontaxable costs that
28

1 are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). Defendants'
2 agreement to pay Class Counsel's fees is reasonable under two California fee-shifting
3 statutes, both of which are designed to reward counsel who successfully pursue
4 consumers' interests through publicly beneficial litigation. The first statute is the
5 California Consumers Legal Remedies Act (CLRA), Cal. Civ. Code § 1780(e), which
6 provides for an award of attorney fees to a prevailing plaintiff in an action brought
7 under the CLRA (as this case was). The second statute is California's codification of
8 the private attorney general doctrine, Cal. Code of Civ. Proc. § 1021.5, which provides
9 attorney fees to a successful party who confers a significant benefit on the general
10 public or large class of persons.

11 Plaintiffs are entitled to a fee under both of these statutes, as they succeeded in
12 their litigation objectives: owners and lessees of Class Vehicles will receive a Lifetime
13 Warranty on their engines, they are warned about the alleged engine defect and
14 safeguarded with the Knock Sensor Detection System, they will receive repair
15 reimbursements, as well as additional payments for inconvenience due to repair
16 delays, loss of value for sold or traded-in vehicles, loss of vehicle by engine fire, and a
17 rebate program. It does not matter that Plaintiffs succeeded through a settlement rather
18 than a trial judgment, it only matters that they succeeded. *See Graham v.*
19 *DaimlerChrysler Corp.*, 34 Cal. 4th 553, 566 (2004) ("[t]he critical fact is the impact
20 of the action, not the manner of its resolution") (citation omitted); *Kim v. Euromotors*
21 *West/The Auto Gallery*, 149 Cal. App. 4th 170, 178-79 (2007) (a plaintiff may be
22 entitled to a fee under the CLRA "either because he obtained a net monetary recovery
23 or because he achieved most or all of what he wanted by filing the action or a
24 combination of the two.").

25 **B. The Fee Request is Reasonable Under the Lodestar Method**

26 The parties successfully mediated Class Counsel's fee and expense award, but
27 had they litigated the matter, the Court would determine a reasonable fee using
28

1 California's lodestar method. *See Mangold v. California Public Utilities Commission*,
2 67 F.3d 1470, 1478 (9th Cir. 1995) (in diversity cases, state law applies "in
3 determining not only the right to fees, but also in the method of calculating the fees").
4 The California Supreme Court has authorized courts to use either the lodestar method
5 or the percentage method in common fund cases, but as this is a fee-shifting case
6 rather than a common fund case, the lodestar method remains "[t]he primary method
7 for establishing the amount of 'reasonable' attorney fees." *In re Consumer Privacy*
8 *Cases*, 175 Cal. App. 4th 545, 556 (2009); *Laffitte v. Robert Half Int'l Inc.*, 376 P.3d
9 672, 686 (Cal. 2016) ("We do not address here whether or how the use of a percentage
10 method may be applied when there is no conventional common fund out of which the
11 award is to be made.").

12 Using the lodestar method, the Court would first calculate Class Counsel's
13 lodestar based on "careful compilation of the time spent and reasonable hourly
14 compensation for each attorney . . . involved in the presentation of the case." *Laffitte*,
15 376 P.3d at 682. It may then adjust the lodestar figure by applying a multiplier, the
16 primary purpose of which is to compensate counsel for prosecuting the case on a
17 contingent basis. *Id.* at 677.

18 "The Ninth Circuit has identified a number of factors the Court may consider in
19 assessing whether a fee award is reasonable, including: (1) the results achieved, (2) the
20 risk of litigation, (3) the skill required and quality of work, and (4) the contingent
21 nature of the fee and the financial burden carried by the plaintiffs." *Kissel v. Code 42*
22 *Software Inc.*, No. 8:15-cv-01936, 2018 WL 6113078, at *4 (C.D. Cal. Feb. 20, 2018)
23 (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002)). Each
24 factor supports Class Counsel's fee request.

25 **1. Results Achieved**

26 "The overall result and benefit to the class from the litigation is the most critical
27 factor in granting a fee award." *Graham v. Capital One Bank (USA), N.A.*, No.
28

1 SACV1300743JLSJPRX, 2014 WL 12579806, at *5 (C.D. Cal. Dec. 8, 2014); *see*
2 *also In re Heritage Bond Litig.*, No. 02-ML-1475, 2005 WL 1594389, *8 (C.D. Cal.
3 2005) (“Courts have consistently recognized that the result achieved is a major factor
4 to be considered in making a fee award.”). Here, the Settlement confers substantial
5 benefits on a Class involving 4.1 million vehicles. Class members will receive an
6 engine warrantied for life, repair and miscellaneous expense reimbursements, the
7 benefits of a robust notice and remedial program, as well as additional cash payments
8 for inconvenience due to repair delays, loss of value for sold or traded-in vehicles, loss
9 of vehicle by engine fire, and a rebate program. Plaintiffs secured the relief for the
10 Class that they originally set out to recover.

11 Class Counsel retained an expert to value the Settlement because its benefits
12 cannot be monetized with certainty given the claims deadline does not pass until after
13 final approval and several components of the Settlement are difficult to quantify with
14 precision. *See Yamada v. Nobel Biocare Holding AG*, 825 F.3d 536, 546 (9th Cir.
15 2016) (quoting *In re Bluetooth*, 654 F.3d at 941–42) (finding lodestar method
16 appropriate “where the relief sought and obtained is not easily monetized, ensuring
17 compensation for counsel who undertake socially beneficial litigation”). While
18 Defendants earmarked \$760,000,000 to implement the terms of the Settlement,⁴
19 Plaintiffs’ valuation is a more precise analysis of the benefits and the actual value to
20 Class members, as opposed to the Settlement costs to Defendants. Plaintiffs will
21 submit this valuation in conjunction with their final approval motion.

22 The results achieved here are excellent, and Class Counsel’s fee award should
23 reflect this.

24
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26
27 ⁴ <https://www.reuters.com/article/us-hyundai-motor-settlement-usa/hyundai-kia-earmark-760-million-to-settle-us-lawsuits-over-engine-fires-idUSKBN1WQ0MN> (last
28 visited Sep. 30, 2020).

1 **2. Risk of Litigation**

2 Another factor to consider in determining attorneys' fees is the risk counsel took
3 of "not recovering at all, particularly in a case involving complicated legal issues." *In*
4 *re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prod. Liab.*
5 *Litig.*, No. 810ML02151JVSFMOX, 2013 WL 12327929, at *31 (C.D. Cal. July 24,
6 2013) (internal alterations and citations omitted); *see also In re Heritage Bond*, 2005
7 WL 1594389, at *14 ("The risks assumed by Class Counsel, particularly the risk of
8 non-payment or reimbursement of costs, is a factor in determining counsel's proper
9 fee award."); *Vizcaino*, 290 F.3d at 1048 ("Risk is a relevant circumstance.").

10 Here, the litigation was fraught with numerous risks. (Schelkopf Decl. ¶¶ 22-28;
11 Berman Decl. ¶¶ 24-25; 30-31.) Two motions to dismiss were pending, and additional
12 motion practice, including dispositive motions, was sure to come. Further prosecution
13 of the case would require substantial and document-heavy discovery, costly expert
14 retention and services, *Daubert* briefing, class certification briefing, a lengthy trial,
15 and post-trial appeals. While Class Counsel are confident in Plaintiffs' claims, there is
16 a recognized element of risk in any litigation, particularly complex and expensive
17 class litigation as here. (Schelkopf Decl. ¶¶ 22-28; Berman Decl. ¶¶ 24-25; 30-31.)
18 And though improvement campaigns and recalls have been launched, Defendants
19 maintain that Class Vehicles are not defective. The risk of the litigation supports Class
20 Counsel's fee request.

21 **3. Skill Required**

22 "Courts have recognized that the 'prosecution and management of a complex
23 national class action requires unique legal skills and abilities.'" *In re Toyota Motor*
24 *Corp. Unintended Acceleration Mktg., Sales Practices, & Prod. Liab. Litig.*, 2013 WL
25 12327929, at *31 (quoting *Knight v. Red Door Salons, Inc.*, No. 08-01520 SC, 2009
26 WL 248367, at *6 (N.D. Cal. Feb. 2, 2009)). When evaluating this factor, the "single
27 clearest factor reflecting the quality of class counsels' services to the class are the
28

1 results obtained.” *In re Heritage Bond Litig.*, 2005 WL 1594389, at *12 (citations
2 omitted). As set forth above, the results achieved here confer significant benefits to the
3 Class.

4 Moreover, Class Counsel have significant experience in consumer class actions,
5 products liability, and auto defect cases. (Schelkopf Decl. ¶¶ 8; Berman Decl. ¶¶ 4-5.)
6 Through this experience, Class Counsel leveraged a high-value Settlement providing
7 lifetime benefits and significant cash reimbursements, among other benefits. Class
8 Counsel aggressively and vigorously pursued recovery for the Class consistent with
9 their class litigation experience. The skill required and utilized here supports approval
10 of Class Counsel’s fee request.

11 **4. Contingent Nature of the Fee**

12 “Attorneys are entitled to a larger fee award when their compensation is
13 contingent in nature.” *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales*
14 *Practices, & Prod. Liab. Litig.*, 2013 WL 12327929, at *32 (citing *Vizcaino*, 290 F.3d
15 at 1048-50); *see also Kissel*, 2018 WL 6113078, at *5 (“Courts have long recognized
16 that the attorneys’ contingent risk is an important factor in determining the fee award
17 and may justify awarding a premium over an attorney’s normal hourly rates.”).

18 Class Counsel litigated this class action over the last three years on a purely
19 contingent basis and the risk of non-recovery was sufficiently substantial to justify the
20 instant fee request. (Schelkopf Decl. ¶ 29; Berman Decl. ¶ 30.) Class Counsel’s time
21 and resources dedicated to this matter also meant forgoing other legal work for which
22 they could have been compensated. (Schelkopf Decl. ¶¶ 29, 37; Berman Decl. ¶ 30.)
23 Because attorneys pursuing claims in contingency will sometimes lose after expending
24 thousands of hours and advancing tens of thousands of dollars in expenses, even
25 where litigating diligently and expertly, an enhancement ensures these risks do not
26 outweigh the incentive to pursue consumer claims. As such, the contingent nature of
27 the fee supports Class Counsel’s request.

1 **5. The Sole Objection to the Attorneys' Fees Should be Overruled.**

2 To date, just one Class member has objected to the attorney fees in this matter.⁵
3 (Schelkopf Decl., Ex. A.) The objection contends the Settlement “produc[es] nothing
4 of value” and that a cap of \$1.2 million in fees is appropriate because the case is the
5 “equivalent to whitening out the name of the last corporation tagged with a law[suit].”
6 *Id.* The only elaboration provided for the proposed fee cap is that it “would be much
7 more appropriate and congruent with what a reasonable person would consider
8 appropriate for the intellectual and administrative work involved in this case.” *Id.* This
9 threadbare objection should be overruled. First, out of a Class involving 4.1 million
10 vehicles, just one putative Class member objected to the potential attorneys' fees
11 award is indicative of classes support of the proposed fee. *See Spann v. J.C. Penney*
12 *Corp.*, 211 F. Supp. 3d 1244, 1257-58 (C.D. Cal. 2016) (finding low number of
13 objections supported approval of settlement). Second, the contention that this lawsuit
14 is without merit is directly belied by Class Counsel's work and the substantial relief
15 offered through the Settlement. The objector also ignores 80 pages of substantive
16 allegations included in the Consolidated Complaint. (ECF No. 54, ¶¶ 69-121.) Third,
17 the objector fails to identify any basis for his belief that an arbitrary fee cap of \$1.2
18 million, which would reflect a lodestar multiplier of 0.33, is appropriate, or any relief
19 that he contends is missing from the Settlement. *See Moore v. Verizon Commc'ns Inc.*,
20 No. C 09-1823 SBA, 2013 WL 4610764, at *10 (N.D. Cal. Aug. 28, 2013) (rejecting
21 objections that lacked any bases other than class members subjective desires).

22 **6. Class Counsel's Hourly Rates are Reasonable.**

23 Counsel's rates are reasonable if they are within the range charged by and
24 awarded to attorneys of comparable experience, reputation, and ability for similar
25

26 ⁵ While additional objections have been received, none relate to the requested
27 attorneys' fee award. Plaintiffs will address said objections in their Motion for Final
28 Approval. Plaintiffs will also file a supplemental brief in the event additional class
members lodge objections to the proposed attorneys' fees and expenses.

work, *i.e.*, complex class action litigation. *Children’s Hosp. and Med. Ctr. v. Bonta*, 97 Cal. App. 4th 740, 783 (2002) (affirming rates “within the range of reasonable rates charged by and judicially awarded comparable attorneys for comparable work”); *accord Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984) (determining reasonable rate by examining the rate “prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation”). Below are the current billing rates for each attorney or staff who contributed to this case, along with the hours billed and resulting lodestar.⁶ Additional information about the work performed by each firm is provided in the declarations of Class Counsel. (Schelkopf Decl. ¶¶ 10-21, 29-41; Berman Decl. ¶¶ 4-5, 15-23.) The time committed by each firm was necessary to the successful resolution of this litigation. After Interim Class Counsel was appointed (ECF No. 80), those attorneys made sure to efficiently allocate work, coordinate assignments, and worked to prevent the unnecessary duplication of work. (Schelkopf Decl. ¶¶ 32-35; Berman Decl. ¶ 18.)

Sauder Schelkopf LLC

Name	Role	Rate	Hours	Lodestar
Joseph G. Sauder	Partner	\$750	145.90	\$109,425.00
Matthew D. Schelkopf	Partner	\$700	881.60	\$617,120.00
Lori Kier	Of Counsel	\$500	121.6	\$60,800.00
Joseph B. Kenney	Associate	\$475	252.00	\$119,700.00
<u>Totals</u>			<u>1401.1</u>	<u>\$907,045.00</u>

Walsh PLLC

Name	Role	Rate	Hours	Lodestar
Bonner Walsh	Partner	\$650	674.1	\$438,165.00
Carla Walsh	Partner	\$500	33.2	\$16,600.00
<u>Totals</u>			<u>707.3</u>	<u>\$454,765.00</u>

⁶ Detailed billing records in Microsoft Excel format will be submitted prior to the Final Approval Hearing.

Law Office of Adam R. Gonnelli, L.L.C.

Name	Role	Rate	Hours	Lodestar
Adam Gonnelli	Partner	\$795	115.4	\$91,742.00
<u>Totals</u>			115.4	<u>\$91,742.00</u>

The Sultzer Law Group, P.C.

Name	Title	Rate	Hours	Lodestar
Jason Sultzer	Partner	\$795	5.2	\$4,134.00
Adam Gonnelli	Partner	\$795	601.5	\$478,192.50
Michael Liskow	Partner	\$700	.3	\$210.00
Jeremy Francis	Associate	\$450	35.9	\$16,155.00
Richard Todorov	Paralegal	\$195	75.5	\$14,722.50
<u>Totals</u>			<u>718.4</u>	<u>\$525,871.37</u>

Hagens Berman Sobol Shapiro LLP

Name	Role	Rate	Hours	Lodestar
Leonard Aragon	Partner	\$650.00	2.30	\$1,495.00
Steve Berman	Partner	\$1,075.00	62.50	\$67,187.50
Elaine Byszewski	Partner	\$700.00	11.50	\$8,050.00
Rob Carey	Partner	\$800.00	114.50	\$91,600.00
John DeStefano	Associate	\$550.00	0.60	\$330.00
Rachel Fitzpatrick	Associate	\$475.00	1095.20	\$520,220.00
Sean Matt	Partner	\$800.00	4.00	\$3,200.00
Jennifer Conte	Paralegal	\$300.00	2.30	\$690.00
Carrie Flexer	Paralegal	\$300.00	1.00	\$300.00
Adrian Garcia	Legal Assistant	\$175.00	37.70	\$6,597.50
Beth Gibson	Paralegal	\$290.00	167.10	\$48,459.00
Nicolle Grueneich	Paralegal	\$250.00	15.40	\$3,850.00
Robert Haegele	Paralegal	\$250.00	26.80	\$6,700.00
Leigha Henson	Paralegal	\$250.00	71.20	\$17,800.00
Cindy Johnson	Paralegal	\$290.00	12.00	\$3,480.00
Chan Lovell	Legal Assistant	\$175.00	0.80	\$140.00
Susan Pearce	Paralegal	\$290.00	102.10	\$29,609.00
Chad Schaaf	Legal Assistant	\$175.00	0.60	\$105.00

Name	Role	Rate	Hours	Lodestar
Kennedy Skoda	Paralegal	\$230.00	1.90	\$437.00
Shelby Taylor	Paralegal	\$250.00	1.00	\$250.00
<u>Totals</u>			<u>1730.50</u>	<u>\$810,500.00</u>

Levin Sedran & Berman LLP

Name	Role	Rate	Hours	Lodestar
Howard J. Sedran	Partner	\$795	4.95	\$3,935.25
Daniel C. Levin	Partner	\$975	108.50	\$105,787.50
Charles E. Schaffer	Partner	\$975	9.75	\$9,506.25
Austin B. Cohen	Partner	\$975	282.00	\$274,950.00
Cheryl Hesson	Paralegal	\$450	2.00	\$900.00
Jim Rapone	Paralegal	\$450	343.20	\$154,440.00
Kyle Sentyz	Paralegal	\$450	29.50	\$13,275.00
<u>Totals</u>			<u>779.90</u>	<u>\$562,794.00</u>

Migliaccio & Rathod LLP

Name	Role	Rate	Hours	Lodestar
Nicholas A. Migliaccio	Partner	\$759	17.6	\$ 13,358.40
Jason S. Rathod	Partner	\$759	19.3	\$14,648.70
Esfand Y. Nafisi	Of Counsel	\$759	115.1	\$87,360.90
Erick Quezada	Associate	\$378	1.75	\$661.50
Kevin Kearns	Paralegal	\$206	0.80	\$164.89
Bruno Ortega	Law Clerk	\$206	21.9	\$4,445.70
<u>Totals</u>			<u>176.45</u>	<u>\$120,640.00</u>

Bardo Law PC (Local Counsel to Migliaccio & Rathod LLP)

Name	Role	Rate	Hours	Lodestar
Stacey Bardo	Partner	\$525	14.3	\$7,507.50
<u>Totals</u>			<u>14.3</u>	<u>\$7,507.50</u>

Nye, Stirling, Hale & Miller, LLP (Local Counsel to Walsh PLLC)

Name	Role	Rate	Hours	Lodestar
Jonathan Miller	Partner	\$700	38.7	\$27,090.00
Alison Bernal	Partner	\$700	45.5	\$31,850.00
<u>Totals</u>			<u>84.2</u>	<u>\$58,940.00</u>

Hourly rates are set by counsel based on their experience, periodic review of the rates charged by other attorneys involved in complex litigation, and survey results published by trade periodicals like the National Law Journal, and fall within the range of rates prevailing in the relevant legal community. *See Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, No. 8:15-cv-01614-JLS-JCG, 2018 WL 8334858, at *6 (C.D. Cal. July 30, 2018) (approving billing rates between \$600 and \$825 per hour for attorneys with more than ten years of experience, and \$325 to \$575 per hour for attorneys with 10 or fewer years of experience, and \$250 per hour for paralegals and clerks).

Class Counsel are respected and accomplished plaintiffs' firms responsible for numerous class action settlements. (Schelkopf Decl. ¶ 8; Berman Decl. ¶¶ 4-5.) Class Counsel's hourly rates are also regularly evaluated and approved as reasonable by California courts and across the country. *See, e.g., Henderson v. Volvo Cars of N. Am., LLC*, No. 09-4146, 2013 WL 1192479, *15-16 (D.N.J. Mar. 22, 2013); *Yaeger v. Subaru of Am., Inc.*, No. 1:14-cv-4490, 2016 WL 4547126, at *2 (D.N.J. Aug. 31, 2016); *Fath v. American Honda Motor Co., Inc.*, No. 18-cv-1549, ECF No. 148 (D. Minn. Sept. 11, 2020); *Bang v. BMW of N. Am., LLC*, No. 2:15-cv-6945 (D.N.J. Sept. 11, 2018); *Andrew Tyler Foster, et. al, v. L-3 Communications EOTech Inc. et. al*, No. 6:15-cv-03519-BCW (W.D. Mo. July 7, 2017); *Cameron Park, et. al, v. Zuffa, LLC et. al*, No. 2:17-cv-02282-APG-VCF (D. Nev. July 23, 2018); *Meghan Schmitt, et. al, v. Younique, LLC*, No. 8:17-cv-01397-jvs-jde (C.D. Cal. April 8, 2020); *Hartley v. Sig Sauer, Inc.*, No. 4:18-cv-00267-SRB (W.D. Mo., June 25, 2020); *See, e.g., In re McKesson Corp. Derivative Litig.*, No. 4:17-cv-01850-CW (N.D. Cal. Apr. 22, 2020), Doc. 231-1 at 9-10; *In re Hyundai and Kia Fuel Economy Litig.*, 2:13-ml-02424-GW-FFM (C.D. Cal. Nov. 14, 2019), Doc. 593 at 1; *In re Celebrex (Celecoxib) Antitrust Litig.*, No. 2:14-cv-00361-AWA-DEM (E.D. Va. April 18, 2018), Doc. 630 at 6-10; *In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and*

1 *Products Liability Litig.*, No. 8:10-ml-02151-JVS-FMO (C.D. Cal. July 24, 2013),
2 Doc. 3933 at Attachment 2. The requested rates should be approved.

3 **7. A Lodestar Multiplier is Appropriate**

4 After arriving at the total lodestar figure, the court may “increase or decrease
5 that amount by applying a positive or negative multiplier to take into account a variety
6 of other factors, including the quality of the representation, the novelty and complexity
7 of the issues, the results obtained, and the contingent risk provided.” *Thomas v.*
8 *Cognizant Tech. Sols. U.S. Corp.*, No. SACV111123JSTANX, 2013 WL 12371622, at
9 *8 (C.D. Cal. June 24, 2013) (quoting *Lealao v. Beneficial California, Inc.*, 82 Cal.
10 App. 4th 19, 26, 97 Cal. Rptr. 2d 797, 803 (2000)); *see also In re Bluetooth Headset*
11 *Prod. Liability Litig.*, 654 F.3d 935, 941-42 (9th Cir. 2011). “Foremost among these
12 considerations, however, is the benefit obtained for the class.” *Thomas*, 2013 WL
13 12371622, at *8.

14 Here, the results obtained support the award of a lodestar multiplier, as
15 discussed in section III.B.1, *supra*. The Settlement offers numerous benefits to ensure
16 relief for Class members with varying experiences and harms from the alleged defect.
17 The Settlement provides a lifetime warranty on the engines of roughly 4.1 million
18 vehicles, a failsafe mechanism for the subset of vehicles in which the defect manifests,
19 cash payments and reimbursements for out-of-pocket expenses and miscellaneous
20 inconveniences, compensation for vehicles sold or totaled by the defect, and a rebate
21 program for losses in vehicle value associated with the defect.

22 Class Counsel’s skill and quality of representation further supports a multiplier.
23 See section III.B.3, *supra*. They are sophisticated firms regularly engaged in the high-
24 stakes practice of complex litigation, including automotive class actions. Class
25 Counsel have successfully resolved cases such as this, while achieving substantial
26 benefits for the Class. (Schelkopf Decl. ¶ 8; Berman Decl. ¶¶ 4-5; 16.) This
27
28

1 experience, combined with the significant time and resources investment during the
2 pre-filing investigation, paved the way for successful resolution.

3 Finally, the novelty and the complexity of the issues also support a lodestar
4 multiplier. Class actions typically entail a high level of risk, expense, and complexity.
5 *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998). If the Parties
6 were unable to resolve this case through settlement, the litigation path would have
7 been fraught with risk. Class Counsel frequently litigate automotive defect class
8 actions that take several years to resolve, and some have gone on for over a decade
9 with appeals. *See Horsford v. Bd. of Trustees of California State Univ.*, 132 Cal. App.
10 4th 359, 399-400, 33 Cal. Rptr. 3d 644, 675-76 (2005) (holding trial court abused
11 discretion in failing to consider relevant factors such as years-long delay in
12 compensation in awarding enhancement multiplier). Before ever approaching trial,
13 Plaintiffs were likely to face expensive and extensive discovery, class certification,
14 summary judgment, and potentially a Rule 23(f) appeal briefing, and expert discovery
15 and *Daubert* motions. It is unlikely the case would reach trial before late 2021, with
16 post-trial activity to follow. By that time, many more Class members will have sold
17 their vehicles, losing the very powertrain warranty being extended indefinitely under
18 the Settlement for both original and subsequent owners. The passage of time would
19 also pose a risk to Class members because of the potential for engine seizure or
20 stalling, which they have now been notified of, and are able to address through free
21 inspections, software updates, and repairs.⁷

22 **8. Class Counsel's Lodestar Multiplier is Reasonable**

23 After determining the lodestar, "the Court divides the total fees sought by the
24 lodestar to arrive at the multiplier. ... If the multiplier falls within an acceptable range,
25 it further supports the conclusion that the fees sought are, in fact, reasonable."
26

27 ⁷ The remaining factor, the contingent nature of the risk, is addressed in section
28 III.B.4, *infra*.

1 *Schuchardt v. Law Office of Rory W. Clark*, 314 F.R.D. 673, 690 (N.D. Cal. 2016).
2 Here, the total lodestar for Class Counsel’s work, as reflected in the above chart, is
3 \$3,539,804.87, and the total fee sought is \$6,900,000—yielding a multiplier of 1.94.
4 Over the past three years, Class Counsel has incurred a total of \$122,018.50 in
5 litigation expenses to prosecute this case, including expert fees, mediation fees, and
6 travel expenses. (Schelkopf Decl. ¶ 40; Berman Decl. ¶ 19.) The multiplier will
7 decrease in the coming months, even beyond the April 2021 claims deadline, as Class
8 Counsel continues to fulfill their obligations to the Class. (Schelkopf Decl. ¶ 36;
9 Berman Decl. ¶¶ 23, 32.)

10 The 1.94 lodestar multiplier sought here is well within the range of multipliers
11 awarded in the Ninth Circuit. *See, e.g., Vizcaino*, 290 F.3d at 1051 n.6 (observing that
12 in the Ninth Circuit, multipliers “ranging from one to four are frequently awarded ...
13 when the lodestar method is applied” and approving multiplier of 3.65); *Vandervort v.*
14 *Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding lodestar
15 multiplier of 2.52); *MacDonald v. Ford Motor Co.*, No. 13-cv-2988, 2016 WL
16 3055643 at *9-10 (N.D. Cal. May 31, 2016) (awarding fee multiplier of 2.0); *In re*
17 *Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 2672
18 CRB (JSC), 2017 WL 1352859, at *6 (N.D. Cal. Apr. 12, 2017) (awarding 2.0
19 multiplier); *Spann v. J.C. Penney Corp.*, 211 F. Supp. 3d 1244, 1265 (C.D. Cal. 2016)
20 (awarding 3.07 multiplier).

21 A 1.94 multiplier raises no concerns of collusion⁸ either, as the fees Class
22 Counsel seek—and Defendants agreed to pay—were negotiated only after the
23

24 ⁸ In an *en banc* decision recently argued and won by appointed co-Class Counsel
25 Steve Berman, the Ninth Circuit panel found that separate settlement and fee
26 negotiations indicate non-collusiveness. *In re Hyundai & Kia Fuel Econ. Litig.*, 926
27 F.3d 539, 569-70 (9th Cir. 2019) (“The settling parties agreed on the amount of class
28 compensation more than six months *before* negotiating, ‘over multiple mediation
sessions with a respected and experienced mediator,’ the ‘reasonable’ attorney’s fees
provided in the settlement agreement.”) (emphasis in original).

1 Settlement terms were reached, and their payment will not dilute the recovery to the
2 Class. (Schelkopf Decl. ¶¶ 21, 38; Berman Decl. ¶¶ 27-29.) *See Laguna v. Coverall*
3 *North America*, 753 F.3d 918, 922 (9th Cir. 2014) *vac'd as moot*, 772 F.3d 608 (9th
4 Cir. Nov. 20, 2014) (finding district court must account for the fact that “the parties
5 are compromising to avoid litigation” and “need not inquire into the reasonableness of
6 the fees even at the high end with precisely the same level of scrutiny as when the fee
7 amount is litigated.”) (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 966 (9th Cir.
8 2003)). Here, the agreed-upon attorneys’ fees and costs are the product of non-
9 collusive, adversarial negotiations conducted at arm’s-length after multiple mediations
10 before the Hon. Ronald M. Sabraw (Ret.) and the Hon. Edward A. Infante (Ret.).

11 A 1.94 multiplier is well within, if not lower than, the range of multipliers that
12 the Court could conceivably award in a contested fee motion, and therefore signals
13 Defendants’ agreement to pay class counsel fees was a rational decision that may be
14 approved under Rule 23(h).

15 **9. The Requested Fee is Also Supported by the Common Fund** 16 **Approach**

17 Although this Settlement is not a traditional common fund settlement where a
18 certain amount of money is set aside, the \$760,000,000 Defendants earmarked to
19 implement the Settlement further demonstrates the reasonableness of the fee request.
20 In the Ninth Circuit, “the ‘benchmark’ award is 25 percent of the recovery obtained.”
21 *Vizcaino*, 290 F.3d at 1047 (citations omitted). Here, Class Counsel’s requested fee is
22 just 0.9% of the money set aside by Defendants to honor their obligations under the
23 Settlement, further demonstrating the reasonableness of the fee sought. Moreover, and
24 unlike a traditional common fund settlement, any attorneys’ fees award here will not
25 reduce the valuable benefits made available to the Class members.

26 **10. Class Counsel’s Expenses Are Reasonable.**

27 “Attorneys may recover their reasonable expenses that would typically be billed
28 to paying clients in non-contingency matters.” *Kissel*, 2018 WL 6113078, at *6

(quoting *In re Omnivision*, 559 F. Supp. 2d 1036, 1048 (C.D. Cal. 2008)). “Expenses such as reimbursement for travel, meals, lodging, photocopying, long-distance telephone calls, computer legal research, postage, courier service, mediation, exhibits, documents scanning, and visual equipment are typically recoverable.” *Rutti v. Lojack Corp., Inc.*, No. SACV 06–350 DOC (JCx), 2012 WL 3151077, *12 (C.D. Cal. July 31, 2012).

To date, Plaintiffs’ Counsel have incurred approximately \$122,018.50 in properly documented expenses for the common benefit of Class members. (Schelkopf Decl. ¶ 40; Berman Decl. ¶¶ 20-22; 27-29.) Before final approval, Class Counsel expects to incur additional expenses, including expert fees for the Settlement valuation report, objector depositions (one has been taken to date), evidence storage fees, and miscellaneous costs (e.g., contract with BlackBook permitting Class Counsel to crosscheck vehicle valuations for Class members during the claims process). Plaintiffs will file a supplemental declaration updating the costs incurred before final approval, and in any event will not seek more than \$175,000 in total costs. Because Class Counsel advanced these expenses without guarantee of repayment, and because they are reasonably incurred expenses typically billed to clients, they should be approved.

11. The Service Awards Are Reasonable

Class Counsel requests the Court authorize service awards of \$3,500 to each of the twenty-one Class Representatives.⁹ Service awards are fairly typical in class actions, and “are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the

⁹ The Class Representatives are Cara Centko, Jenn Lazar, Christopher Stanczak, Rose Creps, James Kinnick, Wallace Coats, Maryanne Brogan, Andrea Smolek, Danny Dickerson, Robert Fockler, Amy Franklin, Donald House, Dave Loomis, Joseph McCallister, Arron Miller, Ricky Montoya, Lynn North, Mark Rice, Reid Schmitt, James Smith, and Chris Stackhouse.

1 action, and, sometimes, to recognize their willingness to act as a private attorney
2 general.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009).

3 Here, the named Plaintiffs agreed to sue Defendants and serve as class
4 representatives on behalf of the Class. They communicated and worked with Class
5 Counsel, presented their individual experiences with Class Vehicles to demonstrate
6 common claims, searched for and provided documentation to support their claims,
7 reviewed pleadings, consulted with Class Counsel regarding potential settlement
8 remedies, and carefully reviewed the Settlement Agreement on behalf of the Class.
9 (Schelkopf Decl. ¶ 42; Berman Decl. ¶¶ 34-36.) Although the case settled before
10 discovery of Plaintiffs, the Class Representatives remained committed to the litigation
11 and were willing to serve for as long as it took, to produce personal documents, to sit
12 for a deposition, and to appear at trial if needed. (*Id.*) Their commitment to the Class’s
13 interests and desire to remedy a safety issue, not just for themselves, but also the entire
14 Class was essential to the successful and timely prosecution of this class action and, in
15 Class Counsel’s view, warrants recognition in the form of the \$3,500 service awards
16 requested here. (Schelkopf Decl. ¶ 42; Berman Decl. ¶ 37.) *See Ebarle v. Lifelock,*
17 *Inc.*, No. 15-CV-00258-HSG, 2016 WL 5076203, at *12 (N.D. Cal. Sept. 20, 2016)
18 (“Many courts in the Ninth Circuit have held that a \$5,000 incentive award is
19 ‘presumptively reasonable.’”); *Vandervort*, 8 F. Supp. 3d at 1208 (approving \$5,000
20 incentive award to plaintiffs).

21 IV. CONCLUSION

22 For the foregoing reasons, Plaintiffs respectfully request that the Court enter the
23 accompanying Order awarding Class Counsel \$6,900,000 in attorneys’ fees, actual
24 costs up to \$175,000, and \$3,500 to each named Plaintiff as a service award.
25
26
27
28

1 Dated: September 30, 2020

Respectfully submitted,

2 By: /s/ Matthew D. Schelkopf

3 Joseph G. Sauder

4 Matthew D. Schelkopf

5 Joseph B. Kenney

SAUDER SCHELKOPF

1109 Lancaster Avenue

6 Berwyn, PA 19312

7 Telephone: (610) 200-0581

8 jgs@sstriallawyers.com

9 mds@sstriallawyers.com

jbk@sstriallawyers.com

10 Adam Gonnelli (*pro hac vice*)

11 **LAW OFFICE OF ADAM R. GONNELLI,**
12 **L.L.C.**

7030 E. Genesee Street

13 Fayetteville, NY 13066

14 Telephone: (917) 541-7110

15 Facsimile: (315) 446-7521

adam@arglawoffice.com

16 Bonner Walsh (*pro hac vice*)

17 **WALSH PLLC**

1561 Long Haul Road

18 Grangeville, ID 83530

19 Telephone: (541) 359-2827

20 Facsimile: (866) 503-8206

bonner@walshpllc.com

21 Steve W. Berman (*pro hac vice*)

22 **HAGENS BERMAN SOBOL SHAPIRO**
23 **LLP**

1301 Second Avenue, Suite 2000

24 Seattle, WA 98101

25 Telephone: (206) 623-7292

26 Fax: (206) 623-0594

27 steve@hbsslaw.com

CERTIFICATE OF SERVICE

I, Matthew D. Schelkopf, hereby certify that on this 30th day of September, 2020, I caused the foregoing to be filed using the Court's CM/ECF system, and thereby electronically served it upon all registered ECF users in this case.

By: /s/ Matthew D. Schelkopf
Matthew D. Schelkopf